



the left side of his head on a ground mat.<sup>1</sup> The Office paid appropriate compensation for periods of disability.<sup>2</sup>

The findings of May 2, 2006 computerized tomography testing of appellant's brain showed no evidence of hemorrhage or mass effect. Appellant was treated for continuing headaches by attending physicians who recommended that he treat himself with Tylenol as needed. The headaches were concentrated in the left temporal area above his left eye and became worse with prolonged driving, reading or television watching. Appellant's physicians indicated that the results of diagnostic testing were normal and that he did not have any neurological abnormalities. In October 2006, appellant began to be seen by Dr. Joshua B. Khoury, a Board-certified neurologist, who placed him on low doses of Pamelor. Appellant noted that his headaches gradually lessened over time.

On February 5, 2007 Dr. William B. Head, Jr., a Board-certified neurologist who served as a fitness-for-duty physician, stated that his examination of appellant revealed no objective evidence of any underlying neurological condition or impairment relative to the April 13, 2006 injury. Dr. Head indicated that he did not find any objective basis for appellant's continuing headaches and stated that he was fully capable of driving, safely using a firearm and performing the other duties of his customs and border agent job.

On March 23, 2007 Dr. Khoury indicated that appellant could return to his usual work without limitations on April 12, 2007.<sup>3</sup> On April 12, 2007 appellant returned to his regular full duty.<sup>4</sup> He filed a claim alleging that he sustained a recurrence of disability on or after May 10, 2007 due to his April 13, 2006 employment injury.<sup>5</sup>

In a July 3, 2007 report, Dr. Khoury indicated that appellant reported a gradual increase in the severity of his headaches and in their frequency to a near daily basis. Appellant indicated that he discontinued using Pamelor on a date he could not recall and was placed on Motrin. Dr. Khoury stated that appellant was unclear when the headaches began to increase in frequency and severity but that it was after he discontinued Pamelor. He indicated that appellant's physical examination was normal and recommended that he take Pamelor again. Dr. Khoury stated that appellant should have magnetic resonance imaging scan testing to rule out any underlying structural pathology and recommended formal neuropsychological testing if his symptoms persisted.

In a July 3, 2007 note, Dr. Khoury stated that appellant continued to be under his care for an underlying postconcussive syndrome following a closed-head injury on April 12, 2006. He

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<sup>1</sup> Appellant was practicing tackling moves while at an employee training academy.

<sup>2</sup> Appellant initially received continuation of pay.

<sup>3</sup> In February 2007 appellant reported to Dr. Khoury that he experienced a 90 percent improvement in his constellation of symptoms since April 2006.

<sup>4</sup> Appellant began to participate in an employee training academy.

<sup>5</sup> It is unclear whether appellant completely stopped work beginning May 10, 2007, but he had some periods of work stoppage beginning around that time.

noted, “[Appellant] continues to have a constellation of symptoms including recurrent refractory headaches, concentration difficulties and difficulty completing tasks. For the time being, it would be advisable for him to temporarily remain from work.”

The Office referred appellant to Dr. Steven Mandel, a Board-certified neurologist, for an examination and second opinion, regarding whether he sustained a recurrence of disability due to his April 13, 2006 employment injury. On September 25, 2007 Dr. Mandel provided a description of appellant’s factual and medical history, including the April 13, 2006 employment injury, and noted that his neurological examination of appellant was normal. He stated:

“Although he has complaints of headaches related to stress, driving and physical activity, I find no evidence to indicate any objective impairment based upon any studies obtained to this date to preclude him from engaging in those physical activities from a neurological perspective full time without restrictions. [Appellant] has no physical limitations as related to his work-related injury. Although he has subjective complaints related to his injury, and I cannot indicate that he is at a maximum medical improvement as I cannot prove the presence or absence or any headaches, I find no reason from an objective neurological perspective to preclude him from returning to his previous job full time without restrictions. [Appellant’s] clinical neurological exam[ination] is within normal limits.”

In an October 29, 2007 decision, the Office denied appellant’s claim on the grounds that he did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after May 10, 2007 due to his April 13, 2006 employment injury.

### **LEGAL PRECEDENT**

An individual who claims a recurrence of disability due to an accepted employment-related injury has the burden of establishing by the weight of the substantial, reliable and probative evidence that the disability for which compensation is claimed is causally related to the accepted injury.<sup>6</sup> This burden includes the necessity of furnishing medical evidence from a physician who, on the basis of a complete and accurate factual and medical history, concludes that the disabling condition is causally related to the employment injury and supports that conclusion with sound medical rationale.<sup>7</sup> Where no such rationale is present, medical evidence is of diminished probative value.<sup>8</sup>

### **ANALYSIS**

The Office accepted that on April 13, 2006 appellant, a customs and border agent, sustained a concussion without loss of consciousness when he fell and first struck the left side of

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<sup>6</sup> *Charles H. Tomaszewski*, 39 ECAB 461, 467 (1988); *Dominic M. DeScala*, 37 ECAB 369, 372 (1986).

<sup>7</sup> *Mary S. Brock*, 40 ECAB 461, 471-72 (1989); *Nicolea Brusco*, 33 ECAB 1138, 1140 (1982).

<sup>8</sup> *Michael Stockert*, 39 ECAB 1186, 1187-88 (1988).

his head on a ground mat. Appellant was treated for continuing headaches by attending physicians. On April 12, 2006 he returned to his regular full duty. Appellant filed a claim alleging that he sustained a recurrence of disability on or after May 10, 2007 due to his April 13, 2006 employment injury.

The Board finds that appellant did not submit sufficient medical evidence to establish that he sustained a recurrence of disability on or after May 10, 2007 due to his April 13, 2006 employment injury.

Appellant submitted a July 3, 2007 note in which Dr. Khoury, an attending Board-certified neurologist, noted that he continued to be under his care for an underlying postconcussive syndrome following a closed-head injury on April 12, 2006. Dr. Khoury stated, “[appellant] continues to have a constellation of symptoms including recurrent refractory headaches, concentration difficulties and difficulty completing tasks. For the time being, it would be advisable for him to temporarily remain from work.”

This report, however, is of limited probative value on the relevant issue of the present case in that Dr. Khoury did not provide adequate medical rationale in support of his apparent conclusion that the April 13, 2006 employment injury prevented appellant from working.<sup>9</sup> He did not explain the medical process through which appellant’s accepted condition worsened to the point that he could no longer work. In an accompanying report also dated July 3, 2007, Dr. Khoury stated that appellant’s physical examination was entirely normal. Given these findings, he did not explain why a recommendation of disability was warranted and his recommendation appears to be solely based on appellant’s own reporting of increased subjective symptoms. The provision of medical rationale is especially necessary in the present case as Dr. Khoury had released appellant to full duty just a few months prior but had not seen him in the intervening months.<sup>10</sup>

Moreover, there is evidence of record which shows that appellant did not sustain a recurrence of disability on or after May 10, 2007 due to his April 13, 2006 employment injury. On September 25, 2007 Dr. Mandel, a Board-certified neurologist who served as an Office referral physician, reported that his neurological examination of appellant was normal. He noted that he found no objective evidence of impairment which would preclude appellant from performing all aspects of his regular work duties. Dr. Mandel stated, “He has no physical limitations as related to his work-related injury.”

An award of compensation may not be based on surmise, conjecture or speculation. Neither the fact that appellant’s claimed condition became apparent during a period of employment nor his belief that his condition was aggravated by his employment is sufficient to establish causal relationship.<sup>11</sup> Appellant failed to submit rationalized medical evidence

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<sup>9</sup> See *Leon Harris Ford*, 31 ECAB 514, 518 (1980) (finding that a medical report is of limited probative value on the issue of causal relationship if it contains a conclusion regarding causal relationship which is unsupported by medical rationale).

<sup>10</sup> In addition, it should be noted that Dr. Khoury did not specify any particular period of disability.

<sup>11</sup> See *Walter D. Morehead*, 31 ECAB 188, 194-95 (1986).

establishing that his claimed recurrence of disability is causally related to the accepted employment injury and, therefore, the Office properly denied his claim for compensation.

**CONCLUSION**

The Board finds that appellant did not meet his burden of proof to establish that he sustained a recurrence of disability on or after May 10, 2007 due to his April 13, 2006 employment injury.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' October 29, 2007 decision is affirmed.

Issued: May 12, 2008  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge  
Employees' Compensation Appeals Board